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REMARKS

Claims 1-24 and 26-34 are pending. New claims 31-34 have been added. Claims 1, 7,

18, and 24 are in independent form. Favorable reconsideration and further examination are

respectfully requested.

In the action mailed March 9, 2006, claim 28 was objected to as a substantial duplicate of

claim 25. Claim 28 has been amended to address the Examiner's concerns.

Rejections under 35 U.S.C. § 112

Claims 1, 4, 7, 18, and 24 were rejected under 35 U.S.C. § 112, second paragraph as

allegedly being indefinite on various grounds. 35 U.S.C. § 112, second paragraph requires that

> "The specification shall conclude with one or more claims particularly
> pointing out and distinctly claiming the subject matter which the applicant
> regards as his invention."

Moreover, it is well established that

> "The requirement to 'distinctly' claim means that the claim must have a
> meaning discernible to one of ordinary skill in the art when construed
> according to correct principles..." *See Metabolite Labs., Inc. v. Lab.*
> *Corp. of Am. Holdings*, 370 F.3d 1354, 1366 (Fed. Cir. 2004) (emphasis
> added). *See also M.P.E.P.* §§ 2171, 2172, 2173.

As a threshold issue, page 4 of the Office action questions whether claims 1, 7, 18, and

24 relate to computer auctioning, banking, or electronic commerce. The answer is that these

claims potentially relate to all of these areas, but are not limited to these areas. In particular,

these claims relate to systems and techniques for distributing data in a data management system.

Such data distribution techniques can be used to facilitate business processes in auctioning,

banking, electronic commerce, and other arenas. *See, e.g., specification*, page 1, lines 3-22.

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Applicant submits that the mere fact that the scope of claims 1, 7, 18, and 24 is not limited to computer auctioning, banking, or electronic commerce does not render them indefinite. Indeed, breadth is not equated with indefiniteness. Rather, indefiniteness is premised on the understanding of one of ordinary skill in the art. Accordingly, this is an insufficient basis to maintain the rejections under 35 U.S.C. § 112, second paragraph.

The claims and other bases for the rejections are now addressed individually.

Claim 1

Claim 1 was rejected as indefinite as "not directed to any <u>specific</u> technological art." (emphasis in original).

Applicant respectfully submits that 35 U.S.C. § 112, second paragraph does not require that claims be directed to a "technological art," much less a "<u>specific</u> technological art." Indeed, the existence of a separate "technological art" requirement under 35 U.S.C. § *101* was recently denied by the Board of Patent Appeals and Interferences. *See Ex parte Lundgren*, Appeal No. 2003-2088 (BPAI 2005) (copy enclosed). Accordingly, this is an insufficient basis to maintain the rejection under 35 U.S.C. § 112, second paragraph.

The indefiniteness rejection was also based on claim 1 being "<u>extremely broad</u>." (emphasis in original). However, "[b]readth of a claim is not to be equated with indefiniteness." *See In re Miller*, 441 F.2d 689 (CCPA 1971); M.P.E.P. § 2173.04, entitled "Breadth Is Not Indefiniteness." Accordingly, this is an insufficient basis to maintain the rejection under 35 U.S.C. § 112, second paragraph.

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The indefiniteness rejection was also based on claim 1 not reciting "how does a method determine 'anticipating' distribution of data." Applicant respectfully submits that 35 U.S.C. § 112, second paragraph does not require that claims set forth how to implement the claimed subject matter. Rather, the enablement requirement under 35 U.S.C. § 112, first paragraph applies to the specification. Accordingly, this is an insufficient basis to maintain the rejection of *claim* 1 under 35 U.S.C. § 112, second paragraph.

The indefiniteness rejection was also based on claim 1 reciting the allegedly vague term "data assembly." Applicant submits that the term data assembly would not have been unclear to one of ordinary skill at the time this application was filed. In support of this contention, submitted herewith are the results of a search of issued patents conducted on May 10, 2006 on the USPTO Patent Collection database for the phrase "data assembly." *Available at* http://patft1.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetahtml%2FPTO%2Fsearch-bool.html&r=0&f=S&l=50&TERM1=data+assembly&FIELD1=&co1=AND&TERM2=&FIELD2=&d=PTXT. Over 400 hits were returned. Further, one example of a data assembly, i.e., a data object, is recited in claim 6. The phrase "data assembly" is thus both in common usage and clear to one of ordinary skill in the art. Accordingly, this is an insufficient basis to maintain the rejection of claim 1 under 35 U.S.C. § 112, second paragraph.

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The indefiniteness rejection was also based on claim 1 reciting the allegedly vague term "redundant." Attention is respectfully directed to page 14, line 18 – page 15, line 23, especially page 14, line 20-21, where a meaning of the term redundant data and examples of the addition of redundant data to a data assembly are set forth. Accordingly, withdrawal of the rejection of claim 1 under 35 U.S.C. § 112, second paragraph, is respectfully requested.

The indefiniteness rejection was also based on claim 1 reciting the allegedly vague term "characteristic of a component." Attention is respectfully directed to FIGS. 12 and 14, where example characteristics of target components are illustrated. Further, claim 1 has been amended to recite a characteristic of a component of a data management system. It is thus clear what type of component is referred to in claim 1. Accordingly, this is an insufficient basis to maintain the rejection of claim 1 under 35 U.S.C. § 112, second paragraph.

The indefiniteness rejection was also based on claim 1 not reciting "what the invention is about" and "what kind of operation if being performed." As discussed in great detail above, the meaning of claim 1, both as filed and as amended, is understood to be clear to one of ordinary skill, especially in light of the specification and the widespread usage of the identified terms in the technical literature. Indeed, there is no reason to believe that claim 1 does anything other than set forth exactly what the claimed subject matter "is about" and what kind of operation is performed. Applicants respectfully submit that conclusory statements are insufficient bases to maintain the rejection of claim 1 under 35 U.S.C. § 112, second paragraph.

Applicants therefore respectfully request that the rejection of claim 1 under 35 U.S.C. §

112, second paragraph be withdrawn.

Claim 4

Claim 4 was rejected as indefinite for reciting a "technical characteristic of the

component." Claim 4 has been amended to recite that a technical characteristic characterizes a

technical capability of a component of the data management system. Accordingly, the meaning

of these terms is clear and Applicants respectfully request that the rejection of claim 4 under 35

U.S.C. § 112, second paragraph be withdrawn.

Claim 7

Claim 7 was also rejected as indefinite as "not directed to any specific technological art."

(emphasis in original).

As discussed above in regard to claim 1, 35 U.S.C. § 112, second paragraph does not

require that claims be directed to a "technological art," much less a "specific technological art."

Indeed, the existence of a separate "technological art" requirement under 35 U.S.C. § 101 was

recently denied by the Board of Patent Appeals and Interferences. See Ex parte Lundgren,

Appeal No. 2003-2088 (BPAI 2005). Accordingly, this is an insufficient basis to maintain the

rejection under 35 U.S.C. § 112, second paragraph.

The indefiniteness rejection was also based on claim 7 not reciting "what does the

valuation comprise of." Claim 7 has been amended to delete the word "appraisal" which led to

the confusion and to recite that the valuation information describes results of an evaluation of the

appropriateness of distributing a portion of a data assembly to a component in a data

management system. As for a detailed description of valuation information, attention is respectfully directed to page 12, line 21 – page 14, line 10 where an exemplary description of valuation information, and examples of its uses, are provided. Accordingly, this is an insufficient basis to maintain the rejection of claim 1 under 35 U.S.C. § 112, second paragraph.

The indefiniteness rejection was also based on claim 7 not reciting "what this claim is specifically about" (emphasis in original). As discussed in great detail above, the meaning of claim 7, both as filed and as amended, is understood to be clear to one of ordinary skill, especially in light of the specification. Indeed, there is no reason to believe that claim 7 does anything other than set forth exactly what the claimed subject matter "is specifically about."

Applicants therefore respectfully request that the rejection of claim 7 under 35 U.S.C. § 112, second paragraph be withdrawn.

Claim 18

Claim 18 was rejected as indefinite for reciting the allegedly phrase "historical distribution information" for a data assembly. The meaning of "historical distribution information" was set forth in the body of claim 18, namely, historical distribution information identifies "one or more components that have previously received some version of the data assembly." Further, claim 18 has been amended to recite that the components are components of a data management system. Accordingly, Applicant submits that the meaning of "historical distribution information" is clear and, therefore, withdrawal of the rejection of claim 18 under 35 U.S.C. § 112, second paragraph, is respectfully required.

The indefiniteness rejection was also based on claim 18 reciting the allegedly vague term "data assembly." As discussed above, the phrase "data assembly" is both in common usage and clear to one of ordinary skill in the art. Accordingly, this is an insufficient basis to maintain the rejection of claim 18 under 35 U.S.C. § 112, second paragraph.

The indefiniteness rejection was also based on claim 18 reciting the allegedly vague term "version of the data assembly" and "current version." The rejection has set forth no basis in support of the contention that one of ordinary skill would not understand how a data assembly can have a "version" or a "current version. This is especially true in light of the of the examples described at page 13, line 12 - page 14, line 2 of the specification. Accordingly, this is an insufficient basis to maintain the rejection of claim 18 under 35 U.S.C. § 112, second paragraph.

The indefiniteness rejection was also based on claim 18 reciting the allegedly vague term "target component." Claim 18 has been amended to recite that the target component is a component of a data management system. It is thus clear what type of target component is referred to in claim 18. Accordingly, this is an insufficient basis to maintain the rejection of claim 1 under 35 U.S.C. § 112, second paragraph.

Applicants therefore respectfully request that the rejection of claim 18 under 35 U.S.C. § 112, second paragraph be withdrawn.

Claim 24

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Claim 24 was rejected as indefinite for allegedly reciting some of the same claim limitations as independent claims 7, 18, and 24[sic]. Since applicant has responded to those rejections above, and made corresponding changes to claim 24, Applicant requests that the rejection of claim 24 under 35 U.S.C. § 112, second paragraph be withdrawn.

Rejections under 35 U.S.C. § 101

Claim 1 was rejected under 35 U.S.C. § 101 as allegedly being drawn to non-statutory subject matter. The Office action sets forth several different contentions on which the rejection is based. For example, the rejection contends that claim 1 is directed to an abstract idea and not tied to a technological art, and that it consists solely of a mathematical operation without a practical application.

Applicants respectfully disagree. Claim 1 relates to a method that includes *adding redundant data to a data assembly* based on a characteristic of a component of a data management system targeted for receipt of the data assembly. This adding is done in anticipation of distribution of a data assembly. Clearly, the addition of redundant data to a data assembly is not a mere abstract idea. Rather, such an addition changes the data assembly by adding the redundant data. Moreover, such an addition clearly has a practical application, such as preparing the data assembly for distribution.

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Moreover, as discussed above, the Board of Patent Appeals and Interferences recent concluded that no separate "technological art" requirement under 35 U.S.C. § *101* existed. *See Ex parte Lundgren*, Appeal No. 2003-2088 (BPAI 2005). Accordingly, this is an insufficient basis to maintain the rejection under 35 U.S.C. § 101.

The rejection also contends that the subject matter claim 1 is allegedly non-statutory because it is not tangibly embodied in a manner so as to be executable. However, as quoted in the Office action, 35 U.S.C. § 101 specifically affords that *processes are patentable.* Applicant submits that the contention that all processes must somehow be "tangibly embodied" in order to be patentable flies in the face of the plain language of 35 U.S.C. § 101. Accordingly, this too is an insufficient basis to maintain the rejection under 35 U.S.C. § 101.

The rejection also contends that the subject matter claim 1 is allegedly non-statutory because it is non-functional descriptive material. Applicants point out that claim 1 is a *method* claim. Applicants respectfully submit that *methods are not materials*, much less non-functional descriptive materials. Accordingly, this too is an insufficient basis to maintain the rejection under 35 U.S.C. § 101.

Applicant therefore requests that the rejection of claim 1 under 35 U.S.C. § 101 be withdrawn.

Rejections under 35 U.S.C. § 102

Claim 1

Claim 1 was rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 7,007,076 to Hess et al. (hereinafter "Hess").

As amended, claim 1 relates to a method implemented using a data processing device. The method includes adding redundant data to a data assembly based on a characteristic of a component of a data management system targeted for receipt of the data assembly. The addition is done in anticipation of distribution of the data assembly.

Hess is not understood to disclose or to suggest features of claim 1. In this regard, Hess is not understood to disclose or to suggest a method implemented using a data processing device that includes adding redundant data to a data assembly based on a characteristic of a component of a data management system targeted for receipt of the data assembly, much less adding the redundant data in anticipation of distribution of the data assembly, as recited in claim 1.

Rather, Hess describes a system where data is conveyed in HTML and other formats between a thumb-building machine 450, a listing server 410, a thumb server 430, and one or more clients 470. Hess is largely silent as to the details of the data assemblies that originate many of these data conveyances. An exception is the description of thumb database 1020 illustrated in FIG. 10. In thumb database 1020, each database entry comprises a length field and image data. The length field may identify the length of the entry or the length of the image data. The image data represents the compressed thumbnail image. *See Hess*, col. 10, line 32-36.

Hess thus neither describes nor suggests that thumb database 1020 ever includes redundant data, much less that redundant data is added based on a characteristic of a component of a data management system targeted for receipt of the data assembly, as recited in claim 1. This is perhaps not surprising given Hess' stated objective of maintaining a simple and efficient

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thumb database that is designed to get information into memory quickly to provide fast access to the thumbnail images stored therein. *See, e.g., Hess*, col. 10, line 23-28.

As best understood, the rejection is based on the contention that making a back-up copy of data or reloading data somehow involves adding redundant data to a data assembly. Applicant respectfully disagrees. A back-up copy of data is clearly not the same data assembly, nor does reloading the same data twice somehow add redundant data to a data assembly.

Accordingly, claim 1 is not anticipated by Hess. Applicants thus request that the rejections of claim 1 and the claims dependent therefrom be withdrawn.

Claim 24

Claim 24 was rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Hess.

As amended, claim 24 relates to a computer program product, tangibly stored on one or more computer-readable media. The computer program product includes instructions operable to cause one or more processors to perform operations. The operations include receiving a data assembly identified for distribution to one or more target components in a data management system, extracting a characteristic of the content of the data assembly, determining if distribution of at least a portion of the data assembly to a first target component of the data management system is warranted based on a comparison of the characteristic of the content with a characteristic of the first target component, and determining if distribution of at least the portion of the data assembly to a second target component of the data management system is warranted based on a comparison of the characteristic of the content with a characteristic of the second target component.

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Hess is not understood to disclose or to suggest features of claim 24. In this regard, Hess is not understood to disclose or to suggest determining if distribution of at least a portion of the data assembly to a first target component of the data management system is warranted based on a comparison of the characteristic of the content with characteristics of target components, as recited in claim 24.

Rather, Hess describes a system where data is conveyed to one or more clients 470 using HTML. *See, e.g., Hess*, col. 9, line 7-23. This HTML content is changed based on user queries. *See, e.g., Hess*, col. 9, line 10-13.

Applicant submits that user queries are not characteristics of target components of a data management system. Rather, user queries are simply input from a user.

Moreover, the rejection of claim 24 does not set forth any basis on which the rejection is founded. Since 37 C.F.R. § 1.104(2) requires that the reasons for any adverse action be stated in an Office action, the rejection is facially deficient and Applicant requests that it be withdrawn. Further, Applicant respectfully requests that the reasons for the rejection of any claim, including claim 24, be set forth so that Applicant may judge the propriety of continuing prosecution.

Accordingly, claim 24 is not anticipated by Hess. Applicants thus request that the rejections of claims 24 and the claims dependent therefrom be withdrawn.

Claim 7

Claim 7 was rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,911,131 to Vig (hereinafter "Vig").

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As amended, claim 7 relates to a computer program product, tangibly stored on one or more computer-readable media. The computer program product includes instructions operable to cause one or more processors to perform operations. The operations include receiving valuation information describing results of an evaluation of the appropriateness of distributing a portion of a data assembly to a component in a data management system, and modifying the data assembly for distribution based on the received valuation information.

Vig is not understood to disclose or to suggest features of claim 7. In this regard, Vig is not understood to disclose or to suggest receiving valuation information describing results of an evaluation of the appropriateness of distributing a portion of a data assembly in a data management system and modifying the data assembly for distribution based on the received valuation information, as recited in claim 7.

Rather, Vig describes that a database of records of known artists can be stored. *See Vig*, col. 16, line 25-26. Vig is silent as to any distribution of the records in this known artist database, much less modification of this known artist database based on valuation information describing results of an evaluation of the appropriateness of distributing a portion of this data base to a component of a data management system.

Accordingly, claim 7 is not anticipated by Vig. Applicants thus request that the rejections of claims 7 and the claims dependent therefrom be withdrawn.

Claim 18

Claim 18 was rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,466,917 to Goyal et al. (hereinafter "Goyal").

As amended, claim 18 relates to a computer program product, tangibly stored on one or more computer-readable media. The computer program product includes instructions operable to cause one or more processors to perform operations. The operations include receiving historical distribution information for a data assembly and determining if distribution of at least a portion of a current version of the data assembly to a target component of the data management system is warranted based on the historical distribution information. The historical distribution information identifies one or more components of a data management system that have previously received some version of the data assembly.

Goyal is not understood to disclose or to suggest features of claim 18. In this regard, Goyal is not understood to disclose or to suggest include receiving historical distribution information for a data assembly and determining if distribution of at least a portion of a current version of the data assembly to a target component of the data management system is warranted based on the historical distribution information, as recited in claim 18.

Rather, Goyal describes a system for identifying a participant in an network-based transaction (e.g., auction) system. *See, e.g., Goyal*, col. 2, line 21-23. Once verification is complete, a user can receive a feedback profile that summarizes the most recent comments about the user. *See Goyal*, col. 6, line 57-67.

Goyal does not describe or suggest that historical distribution information for a data assembly is received, much less that a determination if distribution of at least a portion of a current version of the data assembly is warranted based on historical distribution information, as recited in claim 18.

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Accordingly, claim 18 is not anticipated by Goyal. Applicants thus request that the rejections of claims 18 and the claims dependent therefrom be withdrawn.

Each of the dependent claims is also believed to define patentable features of the invention. Each dependent claim partakes of the novelty of its corresponding independent claim and, as such, all dependent claims have not been discussed specifically herein.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.
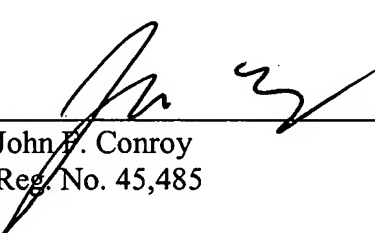
CONCLUSION

Applicants' attorney can be reached at the address shown above. Telephone calls

regarding this application should be directed to 858-678-4346.

No fees are believed due at this time. If this belief is in error and fees are due, please

charge them to deposit account 06-1050, referencing Attorney Docket No. 13907-056001.

Respectfully submitted,

Date: June 8, 2006

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